



COUNTY OF LOS ANGELES

***Department of
Agricultural Commissioner/
Weights and Measures***

Robert G. Atkins
*Interim Agricultural Commissioner/
Director of Weights and Measures*

*Pest Exclusion and Produce Quality
11012 Garfield Avenue
South Gate, California 90280
<http://acwm.co.la.ca.us>*

December 7, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF AGREEMENT # 04-0326 WITH THE CALIFORNIA DEPARTMENT OF
FOOD AND AGRICULTURE FOR THE HIGH RISK PEST EXCLUSION PROGRAM
(ALL DISTRICTS) (3-VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Reappoint the Agricultural Commissioner/Director of Weights and Measures (ACWM) as the lead agent for the County of Los Angeles in the inspection of shipping facilities, such as postal centers, express carriers, and the airport, for the High Risk Pest Exclusion (HRPE) Program. This appointment will be presented to the Secretary of the California Department of Food and Agriculture (CDFA).
2. Approve and instruct the Chairman to sign the attached agreement #04-0326 with CDFA to continue the HRPE Program effective July 1, 2004 through June 30, 2005.
3. Authorize the ACWM to amend the contract agreement in an amount not to exceed 15% of the original contract.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:

Your Board has approved similar agreements with CDFA since 2000. Approval of the recommended actions will enable the ACWM to continue the HRPE Program to prevent the entry of exotic plant pests and diseases into Los Angeles County.

The County HRPE Program increases inspections during package sorting at high-risk shipping facilities, such as postal centers and express carriers. It also provides for the inspection of trucks, sea containers, and air freight terminals where plant shipments are

involved. Preventing pest introductions reduces pest eradication efforts, including the need for pesticide applications, in Los Angeles County.

ACWM has consulted and worked collaboratively with shippers and receivers to assist in preventing the entry of exotic plant pests and diseases.

Implementation of Strategic Plan Goals:

Awarding this contract meets the County's Strategic Plan Goal of Service Excellence. The High Risk Pest Exclusion Program significantly enhances pest exclusion ability and reduces the potential need for pesticide applications in the County. This program is a cornerstone of the Department's main mission.

FISCAL IMPACT/FINANCING:

Under this agreement, CDFA will provide funding in the amount of \$272,141.09 for work performed by ACWM from July 1, 2004 through June 30, 2005. Since 2001, funding from CDFA for this agreement has been \$1.5 million. This year, \$1.2 million of that was lost as CDFA redirected funding to the border inspection stations. Because ACWM will perform up to the funding of the current agreement, the program will allow for full cost recovery and has no effect on net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

Section 2282.5 of the Food and Agricultural Code provides annual funding for the high risk pest exclusion program. It also specifies and mandates that high hazard pest exclusion inspections be enhanced first, and monies may then be available to ten (10) other specified ACWM programs. These programs are pest detection, pest eradication, pest management control, pest exclusion, seed inspection, nursery inspection, fruit and vegetable quality control, egg quality control, apiary inspection and crop statistics.

County Counsel has approved the contract as to form.

IMPACT OF CURRENT SERVICES (OR PROJECTS):

As the lead agency, ACWM will conduct a public information program to alert shippers and receivers about of pest exclusion regulations, as will as perform inspections of plant and agricultural product shipments. Without inspection, nurseries would risk violating quarantine laws by receiving plants infested with exotic pests.

The Honorable Board of Supervisors
December 7, 2004
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CONCLUSION:

When approved, please return to this Department the five (5) signed copies along with the minute order authorizing the Chairman to sign. The Department will forward to the CDFA Contracts Office.

Respectfully submitted,

Robert G. Atkins
Interim Agricultural Commissioner/
Director of Weights and Measures

Attachments
RGA:PJD:pd

c: Chief Administrative Officer
Executive Officer
County Counsel

AGREEMENT NUMBER

04-0326

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF FOOD AND AGRICULTURE

CONTRACTOR'S NAME

County of Los Angeles

2. The term of this Agreement is: July 1, 2004 Through June 30, 2005
3. The maximum amount of this Agreement is: \$272,141.09
Two Hundred Seventy-two Thousand One Hundred Forty-one Dollars and Nine Cents
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work

1 Page(s)

-Attachment 1 - 2 pages, -Attachment 2 - 2 pages
-Attachment 3 - 1 page, -Attachment 4 - 1 page
-Attachment 5 - 1 page

Exhibit B – Budget Detail and Payment Provision

1 Page(s)

Exhibit 1 - 1 page

Exhibit C – General Terms and Conditions

3 Pages

Check mark one item below as Exhibit D:

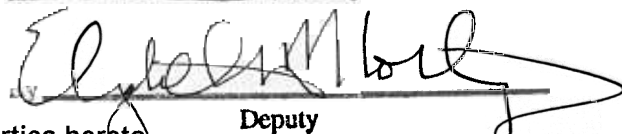
☒ Exhibit D-Special Terms and Conditions
(Attached hereto as part of this Agreement)

1 Page(s)

☐ Exhibit D*-Special Terms and Conditions

APPROVED AS TO FORM

County Counsel



Deputy

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto

CONTRACTOR

**California Department of General
Services Use Only**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

County of Los Angeles

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

12300 Lower Azusa Road
Arcadia, CA 91006

STATE OF CALIFORNIA

AGENCY NAME

DEPARTMENT OF FOOD AND AGRICULTURE

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

PAULA LEWIS, ACQUISITIONS MANAGER

ADDRESS

1220 N STREET, ROOM 100, SACRAMENTO, CA 95814

☐ Exempt per:

EXHIBIT A
SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

The county agrees to perform high-risk inspection and enforcement activities for the California Department of Food and Agriculture in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, and County High-Risk Pest Exclusion Program Guidelines incorporated in this Scope of Work and the Attachments.

Attachment 1, Estimated Work Plan Guidelines
Attachment 2, Scope of Work, Criteria for Work Plan
Attachment 3, Sample Invoice
Attachment 4, Monthly Report of County
Attachment 5, Food and Agricultural Code of California, Chapter 573.

These services shall be performed in the County of this agreement.

2. The contract managers for this Agreement are:

FOR CDFA:		FOR CONTRACTOR:	
Name:	Donnie M. Ereveillo	Name:	Cato Fiksdal
Section/Unit:	Pest Exclusion Branch	Section/Unit:	County Agricultural Commissioner
Address:	1220 N Street, Room A-372	Address:	12300 Lower Azusa Road
City/Zip:	Sacramento, CA 95814	City/Zip:	Arcadia, CA 91006
Phone:	(916) 653-1440	Phone:	(626) 575-5451

COUNTY HIGH RISK PEST EXCLUSION PROGRAM ESTIMATED WORK PLAN GUIDELINES

PROGRAM DEFINITIONS

High-Risk Shipments: are those where there exists a high degree of likelihood that one or more "A" or "Q" rated plant pests will be introduced into or spread within the State by movement or entry of the shipment. "A" and "Q" rated plant pests have been determined to have potential for causing severe damage to the State's agricultural industry, natural resources, or environment, and as such any shipment likely to harbor such pests is considered high-risk. All high-risk shipments are to be inspected. Non-high-risk parcels ("Flower of the Month Club" bulbs, bare-root nursery stock from areas which do not represent a serious quarantine risk, plant materials from California origin with nursery certification, etc.) moving through a "high-risk" facility may be monitored via profiling and inspected as time allows during the premise visit. These shipments will not be included as "high-risk" shipments inspected. High-risk shipments which should be inspected include such items as cut flowers and nursery stock from quarantine areas, any plant materials in unmarked parcels, and other plant material shipments which have a historical record of "A" and "Q" rated pest interceptions.

High-Risk Pathways: those facilities where high-risk shipments are regularly or frequently intercepted. The known high-risk pathways have been listed on the Estimate of High-Risk Pest Exclusion Activities, including U.S. Postal Distribution Centers, UPS (except local), Federal Express, Air Freight, Air Freight Forwarded, Truck Referrals (008a-Gypsy Moth, 008-Plants & 008-Other), Specialty Markets, Swap Meets, Post Entry Quarantine, and "Other" pathways identified in your work plans and approved by the Department.

Shipments Inspected: Shipments physically opened and examined. This is not packages or pots inspected. A shipment is one lot of plant material sent from one shipper to one receiver via one mode of transport.

Rejections: Number of state level rejection notices written. This does not include rejections of materials for failing to meet nursery standards of cleanliness, or materials rejected for B or C rated pests. Any time a live A or Q rated pest is found in a shipment a rejection notice should be issued.

Pest Interceptions: Number of "A" and "Q" pest interceptions. When more than one pest species is found in a single shipment, each different species is to be counted as an interception. Finding more than one pest of the same species does not equate to multiple interceptions.

U.S. Post Office: Postal distribution centers formerly known as sectional centers that sort mail sealed against inspection (first-class, priority, and express mail parcels).

United Parcel Service (except local service): Facilities which process parcels shipped via overnight or expedited service versus facilities that process only parcels moving locally.

Air Freight: Air cargo shipments inspected at the airport facility or at destination (see next item).

Air Freight/Forwarded: Shipments allowed to proceed to destination or another location for inspection within the same county or to another county and under a warning hold notice (blue tag) or by compliance agreement authorization.

Truck (008a): Shipments of historically high-risk household articles from historically high-risk areas that require inspection for gypsy moth.

Truck (008-Plants & 008-Other): High-risk shipments moving to destination under quarantine hold notice. This does not include blue-tagged intrastate shipments of nursery stock inspected for glassy winged sharpshooters.

Post-Entry Quarantine Inspections: These inspections include both site and plant inspections. A shipment should be recorded when plant material is inspected.

Other: This column is to be used to estimate the workload for any high-risk pathway not already listed on the form; these may include: pet stores or aquariums, express parcel carriers, sea freight forwarded or other special focus activities approved by the Department. Special focus activities are then to be described under "Special Focus Description".

ACCOUNTING GUIDELINES

Program cost estimates for high-risk exclusion activities conducted at optimal levels are to be estimated based upon the guidelines and definitions contained within the County Agricultural Commissioners' Annual Financial Statement Procedures Manual. This cost/hour figure is to be estimated from an average of the costs/hour for Fiscal Years 1999/2000, 2000/2001 and 2001/2002. A county may choose to use their established County Auditor approved hourly rate in lieu of the three-year average. This would be the rate charged an applicant for phytosanitary or other type of certification if such a rate is established.

PROGRAM GUIDELINES

1. All inspections of high-risk terminal points are to be conducted as close to optimal service levels as is fiscally possible.
2. Optimal service level inspections are those conducted during the sort time(s) or before the last critical dispatch(s) of the facility monitored.
3. All high-risk shipments are to be inspected. Shipments not presenting a high risk that are moving through a high-risk facility may be monitored and inspected as time permits, but should not be included as a program cost or counted as a measure under this work plan.
4. A shipment is any amount of agriculturally regulated product/packages/potted plants from one specific shipper, in one shipment, sent to one specific consignee.

OPTIMAL SERVICE LEVELS FOR PEST EXCLUSION TERMINAL INSPECTION FREQUENCY

FACILITY	OPTIMUM INSPECTION FREQUENCY
U.S. Postal Distribution Center, United Parcel Service & Federal Express	Daily during sort
Air Freight	Daily when appropriate after offloading
Truck Referrals (008) & (008a)	100 % of Referrals after offloading
Specialty Markets & Swap Meets	Monthly during normal county office hours
Post-Entry Quarantine	All Referrals – Four visits/year normal office hours

**EXHIBIT A
SCOPE OF WORK
Criteria for Work Plan**

The County of Los Angeles agrees to perform high-risk inspection and enforcement activities for the California Department of Food and Agriculture (CDFA) in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, and County High-Risk Pest Exclusion Program Guidelines incorporated in this scope of work.

The County will perform activities approved by the CDFA as described in the attached Estimate of High-Risk Pest Exclusion Activities included in Exhibit B, Budget Detail and Payment Provisions and by this reference made a part hereof. Definitions of the key high-risk activities can be defined as follows:

Inspection work at US Postal Distribution Centers, United Parcel Service Facilities, Federal Express Facilities, and Air Freight Facilities can include, but is not limited to:

1. County biologist(s) reviewing invoices for content origin/destination, checking packages for quarantine compliance, rejecting parcels that do not adhere to quarantine compliance, inspecting for high-risk pests, i.e., red imported fire ants, Japanese beetles, flower thrips, etc.
2. Daily record keeping of inspections in regard to pest finds, writing reports referencing Report 4 and Report 4a to reflect daily record keeping entries, notifying the Senior Agricultural Biologist of the presence of any significant pest finds, etc.
3. Gypsy moth (008a) requires County biologist(s) to visit residence or storage facility to inspect household items for high-risk pests as defined above; Truck Referrals (008) Plants and Truck Referrals (008) Misc.
4. Requires County biologist(s) to visit receivers of products to inspect for pests considered to be high-risk as defined above, after hold notices are received from the border stations; specialty markets and swap meets require County biologist(s) to visit the markets to determine if products are being sold that do not meet the quarantine entry requirements;
5. Post-Entry quarantine inspections require County biologist(s) to inspect plant material to determine if it is infested with high-risk pests as defined above; and other high-risk terminals which can include, but is not limited to maritime terminals, airport terminals, bus terminals, pet stores, aquatic plant dealers, etc.
6. Requires County biologist(s) to continue to enforce quarantine requirements at these facilities in the same manner as all activities listed above.

Exhibit A
Scope of Work
Criteria for Work Plan
Page 2

As quarantine areas and commercial channels change, County biologist(s) shall determine the need to redirect high-risk activities in other areas as needed.

The County's biologist(s) shall determine the time of day and week the inspections are to occur. If a County finds it necessary to deviate from its approved Work Plan, said County will notify the Pest Exclusion High-Risk Program of any changes.

The County shall submit monthly an itemized invoice, on County letterhead, identified in Exhibit A, Attachment 3 and a completed monthly Report 4a, identified as Exhibit A, Attachment 4. All Report 4a's shall be submitted on Form #66-092a to the CDFA contract Manager. Send itemized invoices and monthly Report 4a's to:

The Department of Food and Agriculture
Donnie M. Ereveillo
Pest Exclusion Branch
County High Risk Program
1220 N Street, Room A-372, Sacramento, CA 95814.

SAMPLE INVOICE

(PLEASE SUBMIT ON YOUR COUNTY'S LETTERHEAD)

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
ATTN: DONNIE M. EREVEILLO
COUNTY HIGH RISK PEST EXCLUSION PROGRAM
1220 N STREET, ROOM A-372
SACRAMENTO, CA 95814**

**2004/2005 HIGH RISK PEST EXCLUSION ACTIVITIES
CONTRACT # _____**

INVOICE FOR THE PERIOD FROM _____ TO _____, 2004/2005

NEW ACTIVITY

ACTIVITY	HIGH-RISK
TOTAL HOURS	
COST PER HOUR	
TOTAL COST	

YEAR-TO-DATE-SUMMARY

TOTAL CONTRACT	
EXPENDITURES TO DATE	
BALANCE AVAILABLE	

SIGNATURE OF COUNTY AGRICULTURAL COMMISSIONER

County
 Date:

Type	Premise Visits	Shipments Inspected	NOR's	A/Q Pest Interceptions	Hours
Post Office					
UPS					
Federal Express					
Air Freight					
Air Freight - forwarded					
Gypsy Moth					
Truck (008 Plants)					
Truck (008 Other)					
Specialty Markets					
Swap Meets					
Post Entry					
Other					
Other					
Comments					

Food and Agricultural Code of California

2282.5. (a) The development of work plans for allocation of the funding appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention shall be the responsibility of the department. The department shall establish criteria for the development of the work plans and for allocating the appropriated funds.

(b) Of the amount appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention, five million five hundred thousand dollars (\$5,500,000) shall be utilized solely for high-risk pest exclusion activities. The work plans for the exclusion of high-risk pests shall be developed by the department with the county agricultural commissioners and in consultation with affected industry representatives. In order to determine the effectiveness of high-risk pest exclusion programs in each county, the criteria established by the department for the work plan shall include, but need not be limited to, the following:

(1) The number of high-risk plant shipments entering each county.

(2) The number of high-risk entry points in each county.

(3) The number of state action quarantine pests intercepted or detected annually in each county.

(4) The work hours expended by each county in conducting exclusion of high-risk pests.

(5) The rate of interceptions and rejections per inspection activity.

(c) To remain eligible for funding under this section, a county shall maintain its support of ongoing operational costs of the county agricultural commissioner programs listed in subdivision (b) of Section 2282, at 1997-98 fiscal year levels.

(d) Funds allocated for high-risk pest exclusion activities pursuant to subdivision (b) may not be expended for any purpose other than the exclusion or detection of high-risk pests consistent with the work plans prescribed in subdivision (a) or scientific evaluation. Funds allocated by each county on or after September 28, 1998, shall not be allocated to other programs listed in subdivision (b) of Section 2282 until the county work plan is approved by the department consistent with the funding appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention for this purpose.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears. Invoices shall be submitted to the designated CDFA Contract Manager for this Agreement.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

ESTIMATE OF HIGH-RISK PEST EXCLUSION ACTIVITIES

FISCAL YEAR 2004/2005

WORKPLAN

Exhibit **B**

Attachment 1

County
Los Angeles

Cost per hour:

\$62.42

7/1/04

Facility	No. of High-risk Facilities 04/05	Estimated Visits/Year 04/05	Estimated Hours/Visit 04/05	Estimated Hours/Year 04/05	Estimated Annual Cost 04/05
	6				\$0.00
	9				\$0.00
Federal Express	14				\$0.00
	15	4,447	1.00	4,359.838	\$272,141.09
	100				\$0.00
	825				
Truck Referrals (008) Plants	1,000				\$0.00
Swap Meets	30				
Post Entry Quarantine	20				
Other -Sea Freight	5				\$0.00
Other -Retail Nurseries	75				\$0.00
Totals	2,099	4,447	1.00	4,359.838	\$272,141.09

Description of Other High-Risk Facilities

Sea Freight - high risk tropical plant materials from Hawaii

Retail Nurseries: Target, K-Mart, Jome Depot and similar large retailers of tropicals from Florida which allegedly receive direct shipments of uninspected product on occasion.

*Air Freight also includes Air Freight - Forwarded. \$565,000 is estimated to conduct Air Freight inspection for Fiscal Year 2003/2004.

Include Notes On Reverse

Estimated Hours on USPS, UPS, and Fedex provides time to monitor during sort, plus time to look for unmarked packages

R

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS, GTC-304

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION**: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)
10. **NON-DISCRIMINATION CLAUSE**: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical

disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the

violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

1. Excise Tax

The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. Settlement of Disputes

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. Evaluation of Contractor

Performance of the Contractor under this Agreement shall be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4) and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and the agreement amount is over \$5,000.

4. Agency Liability

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

5. Potential Subcontractors

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

6. Right To Terminate

The State reserves the right to terminate this Agreement without cause subject to 30 days written notice to the Contractor. However, this Agreement can be immediately terminated by the State for cause.

Contractor may terminate this Agreement for cause and be relieved of any further obligations subject to a 60-day written notice to the State, only if contractor can no longer perform its responsibilities or if the State fails to perform its responsibilities as provided herein. Upon such termination, the State shall be relieved of any further payments and this Agreement shall be cancelled.